

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA ex rel. E. Scott
Pruitt, in his official capacity as Attorney
General of Oklahoma, and OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiffs,

v.

GINA McCARTHY, in her official
capacity as Administrator of the
U.S. Environmental Protection Agency,
and U.S. ENVIRONMENTAL
PROTECTION AGENCY,

Defendants.

Case No. 15-CV-0369-CVE-FHM

Defendants' Opposition to Motion to Amend Briefing Schedule (Dkt. # 22)

EPA respectfully opposes Oklahoma's motion to amend the briefing schedule that the Court set in its July 2, 2015 Order. As grounds for this opposition, EPA states the following:

1. The Court's July 2 Order noted that Oklahoma recently lost, on jurisdictional grounds, a challenge in the U.S. Court of Appeals for the District of Columbia Circuit to the same proposed rule that Oklahoma now seeks to challenge in this Court. Order at 1–2, Dkt. # 9. The Court further recognized that Oklahoma's complaint "fails to clearly set forth how this Court has the authority to exercise jurisdiction over this case" and therefore ordered Oklahoma to file a brief addressing this threshold issue "no later than **July 16, 2015.**" *Id.* at 2 (bold

original). The Court ordered EPA to file its response “no later than **August 6, 2015.**” *Id.* (bold original).

2. Oklahoma chose to file its brief on July 8, eight days earlier than the Order allowed. That same day, Oklahoma moved to amend the briefing schedule to require EPA to file its brief eight days earlier than the Order allowed. Dkt. # 22.

3. Oklahoma offers two arguments why the Court should modify the briefing schedule: (1) that Oklahoma is allegedly suffering irreparable injuries; and (2) that Oklahoma chose to file its brief early. Motion ¶¶ 3–4, Dkt. # 22. Neither argument warrants an adjustment to the schedule.

4. *First*, the Court was fully aware of Oklahoma’s allegations of irreparable injury when it set the current briefing schedule. Even with that knowledge, the Court rejected Oklahoma’s Motion for a Preliminary Injunction (Dkt. # 5) and Motion to Expedite Briefing on the Motion for Preliminary Injunction (Dkt. # 7) as moot pending the Court’s determination whether it has jurisdiction over this case. Order at 2, Dkt. # 9. As this Court also recognized (*id.*), Oklahoma previously sought review of the same proposed rule in the D.C. Circuit, where Oklahoma also alleged “ongoing harm” from the proposed rule. *See* States’ Br. at 1, *In re Murray Energy Corp.*, No. 14-1112 (D.C. Cir. June 25, 2014). Oklahoma’s repetition of allegations of irreparable injury does not require an eight-day adjustment to the briefing schedule.

5. *Second*, Oklahoma’s decision to file its brief early is entirely consistent with the Court’s Order that Oklahoma file its brief “no later than” July 16. Order at

2, Dkt. # 9. But Oklahoma has not explained why *its* decision to file early should force *EPA* to file early. The Court ordered EPA to file its response “no later than August 6,” not “within 21 days after Oklahoma files its brief.”

6. *In sum*, Oklahoma has not identified any new developments in the six days between the Court’s Order on July 2 and Oklahoma’s filing of the brief on July 8 that warrant modifying the briefing schedule.

7. Finally, moving up EPA’s response date from August 6 to July 29 would present scheduling difficulties for undersigned counsel for EPA. Undersigned counsel will be out of town on a previously-scheduled family vacation beginning tomorrow, July 11, through July 17. Undersigned counsel informed Oklahoma’s counsel that he had a previously-planned vacation before Oklahoma filed its Motion to Amend Briefing Schedule.

8. For these reasons, the Court should deny Oklahoma’s request to amend the briefing schedule.

Respectfully submitted,

Dated: July 10, 2015

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division

Of Counsel:
SCOTT JORDAN
United States Environmental
Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

/s/ Justin D. Heminger
JUSTIN D. HEMINGER
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Phone (202) 514-2689
justin.heminger@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Oklahoma using the electronic case filing system of the court, which will electronically serve all counsel of record.

/s/ Justin D. Heminger